

Hoff, David

From: lbenfield@foley.com
Sent: Friday, February 21, 2014 11:59 AM
To: Stone, Randall (ENRD)
Cc: Sharfstein, Howard; SSlack@foley.com; 'Cragan, Clare'; john.carlucci@sol.doi.gov; Spector, Jeffrey (ENRD); Hirsch, Cynthia R - DOJ (hirschcr@DOJ.STATE.WI.US); Murawski, Richard; Dixon, Douglas; 'JBITTORF@oneidanation.org'; Furrie, Kristin (ENRD)
Subject: RE: Fox River - U.S. v. NCR, et al.
Attachments: (Untitled).pdf

I am attaching Kimberly-Clark Corporation's executed signature page (page 29) attached to the complete decree; let me know where you would like the original signature page to be sent.

Thank you for all of your work on this. Let me know if you need anything else from us, and please keep us apprised of your timing for filing this with the court.

Linda E. Benfield

Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202
Phone: (414) 297-5825
Fax: (414) 297-4900
Cell: (414) 975-1445
lbenfield@foley.com

From: Stone, Randall (ENRD) [mailto:Randall.Stone@usdoj.gov]

Sent: Wednesday, February 19, 2014 5:26 PM

To: Benfield, Linda E.

Cc: Sharfstein, Howard; Slack, Sarah A.; 'Cragan, Clare'; john.carlucci@sol.doi.gov; Spector, Jeffrey (ENRD); Hirsch, Cynthia R - DOJ (hirschcr@DOJ.STATE.WI.US); Rich Murawski; Douglas P. Dixon (E-mail); 'JBITTORF@oneidanation.org'; Furrie, Kristin (ENRD)

Subject: RE: Fox River - U.S. v. NCR, et al.

Linda –

(cc's as indicated)

Attached is my proposed signature final version of the Consent Decree with Kimberly-Clark. I've attached an MS Word version that should show all changes to the version you sent yesterday, though it's a bit messy because your version used a different change-tracking feature. Also attached is a "clean" PDF version without the change markings.

Please send me a scanned copy of Kimberly-Clark's executed signature page by the end of this week if at all possible.

Thanks,

- Randy Stone

From: lbenfield@foley.com [mailto:lbenfield@foley.com]

Sent: Tuesday, February 18, 2014 11:48 AM

To: Stone, Randall (ENRD)

Cc: Spector, Jeffrey (ENRD); Hirsch, Cynthia R - DOJ (hirschcr@DOJ.STATE.WI.US); Sharfstein, Howard; SSlack@foley.com

Subject: Fox River - U.S. v. NCR, et al.

Randy,

We have reviewed the draft consent decree you recently provided, and our comments are essentially the same as we previously provided, and relate to removing the State of Wisconsin from the decree and increasing the reopener amount. We have also added Paragraph I.T., which follows I.S. and adds a recitation about the current appeal in the Whiting matter. I have attached a marked copy of our proposed revisions for your review.

Kimberly-Clark Corporation ("KCC") still disagrees with the reopener amount of 215 kg. In order to be consistent with the other *de minimis* settlements, and to provide KCC reasonable relief from this matter and the collateral litigation, KCC's reopener should be increased to 500 kg. This is reasonable and defensible.

We understand that the government calculated the settlement payment so that KCC's payment (\$1,350,000) and reopener (215 kg) are nearly the same percentages (0.09% and 0.0934% respectively) of the government's estimates of the potential costs at the site (\$1.5 billion) and the overall PCBs at the site (230,000 kg). However, we note that in the other *de minimis* settlements involving non-UAO parties who are similarly situated to KCC, the settling parties received a much larger "cushion" for their reopeners. For example, Green Bay Metropolitan Sewerage District ("GBMSD") paid \$322,500 for its settlement, which is a 0.0215% share of the total cost estimate at the site; its reopener of 500 kg is more than 10 times the settlement payment percentage. For the City of De Pere settlement, the City paid \$210,000, or 0.014% of the total cost estimate at the site, but the reopener in their decree is 100 kg, three times greater than their payment percentage. For the other 10 non-GBMSD settling parties, they also received reopener amounts greater than their payment percentages.

KCC is simply asking for the same reopener amount that was included in GBMSD's settlement. This is particularly reasonable since KCC's settlement payment is more than 4 times as much as GBMSD paid. The court has approved all of these settlements, which all involved reopener amounts greater than the payment percentages.

I am available to discuss at your convenience, and we look forward to moving this toward resolution.

Linda

Linda E. Benfield

Foley & Lardner LLP

777 E. Wisconsin Ave.

Milwaukee, WI 53202

Phone: (414) 297-5825

Fax: (414) 297-4900

Cell: (414) 975-1445

lbenfield@foley.com

From: Stone, Randall (ENRD) [<mailto:Randall.Stone@usdoj.gov>]

Sent: Friday, February 07, 2014 5:23 PM

To: Benfield, Linda E.

Cc: Slack, Sarah A.; Spector, Jeffrey (ENRD); Hirsch, Cynthia R - DOJ

Subject: Fox River - U.S. v. NCR, et al.

Linda

(cc's as indicated)

Attached is a fairly mature draft of a consent decree with Kimberly-Clark that I believe we exchanged with you some time ago. I've lost track of whether you ever sent us any suggested changes other than expressing a general desire to: (1) delete the provisions treating the State as an additional settler; and (2) increase the PCB mass that would trigger the reopener in Subparagraph 17.a. The first change might be possible for us now as we're working toward another potential settlement that could serve as a vehicle for resolving the State's alleged liability. The second change wouldn't work unless K-C wants to pay more, because the PCB mass reopener figure and the dollar contribution by K-C are intertwined.

As previously discussed, our hope was always to bundle this settlement with one or more other settlements to diffuse the opposition from potential objectors. That may be possible soon, so we need to refocus on this potential settlement now. Please get back to us with any final comments on this Consent Decree draft by February 14. We have told some others that we want their proposed settlement documents finalized and signed on their side by February 21, so that is our goal for Kimberly-Clark as well if we want to get them done together.

- Randy Stone

Randall M. Stone

Senior Attorney

Environmental Enforcement Section

U.S. Department of Justice

Phone: (202) 514-1308

Fax: (202) 616-6584

E-Mail: randall.stone@usdoj.gov

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